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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Farnsworth Construction Company

File: B-237291

Date: January 22, 1990

DIGEST

1. Affirmative responsibility determination is not subject to objection where, although awardee had experienced financial difficulties, contracting officer considered the company's financial situation and found in light of the fact that the company has become part of another corporation reportedly in a strong financial position, and has submitted satisfactory bank references, that company had the financial resources to perform the contract.

2. Protest against agency's acceptance of awardee's four individual sureties is denied where agency investigated the sureties and found that at least two of them were acceptable.

DECISION

Farnsworth Construction Company protests the award of a contract to Score Construction, Inc., under invitation for bids (IFB) No. F29650-89-B1005, issued by the Air Force for improvement of military family housing units at Kirtland Air Force Base. Farnsworth contends that Score is not a responsible contractor because of its financial situation and that the Air Force could not properly have found Score to be responsible. Farnsworth also challenges the acceptability of Score's individual sureties.

We deny the protest.

Bids on the project were opened September 11, 1989, with Score submitting the low bid. Recognizing that Score had financial difficulties, the contracting officer investigated the matter and found that Score had two satisfactory bank references, and had become part of another corporation which reportedly is in a strong financial position. Additionally, the contracting officer found that Score had performed in a satisfactory manner on at least four recent

C47527 / 140443

contracts, three of which were with the Air Force. The agency also conducted an investigation into the individual sureties used by Score on its bid guarantee. While the investigation revealed a number of questions regarding Score's sureties, at least two of the four sureties listed were found to have sufficient assets. Finally, the contracting officer received a preaward survey report from the Defense Contract Administration Services Management Area, Phoenix, which recommended award to Score. Based on this Score was found to be responsible, and was awarded a contract on September 25.

Whether a prospective contractor has adequate financial resources to perform a contract is a question of responsibility, Federal Acquisition Regulation § 9.104-1(a), as is the financial acceptability of a bidder's individual sureties. C.E. Wylie Constr. Co., B-234225 et al., May 5, 1989, 89-1 CPD ¶ 427. The contracting officer is vested with a wide degree of discretion and business judgment in considering responsibility matters, and we will not object to the contracting officer's affirmative responsibility determination in this type of case unless the protester shows that the procuring officials acted in bad faith. C.E. Wylie Constr. Co., B-234225 et al., supra.

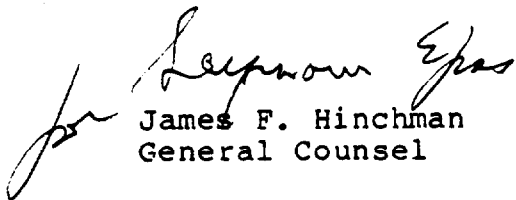
Farnsworth argues that the contracting officer could not have legitimately found Score to be responsible in light of the company's "extremely low price and . . . apparent financial difficulties." In this regard, Farnsworth points to a Dunn & Bradstreet report it obtained on Score, which indicates that Score has a negative net worth.

We do not find any evidence of bad faith here. The fact that a contractor has a negative net worth does not require a finding of nonresponsibility. See Hugo's Cleaning Serv., Inc., B-228396.4, July 27, 1988, 88-2 CPD ¶ 89 (bankruptcy filings do not require finding of nonresponsibility). Moreover, while we agree that Score has experienced financial problems, the contracting officer considered these problems and determined that they were sufficiently offset by Score's becoming part of another corporation which reportedly is in a strong financial position, and by the satisfactory bank references. Score's satisfactory performance on the four recent contracts was also considered. Thus, the record indicates that the contracting officer took Score's financial situation into account, evaluated the overall situation, and in the exercise of his broad discretion determined that Score was sufficiently sound financially to be found responsible. There is nothing in the record showing a lack of good faith on the part of the contracting officer in this respect.

Farnsworth's challenge to Score's individual sureties is based on a report from a surety bond service that alleges that three of Score's four individual sureties do not have sufficient net worth and that one of the sureties did not authorize his use as a surety on Score's bid bond. The documentation submitted by Farnsworth to substantiate its allegation that Score's individual sureties do not have sufficient net worth consists of computer sheets denoting generally the contractor and agency for which a construction project is being performed. The name of the individual sureties to which these computer sheets allegedly apply only appears handwritten across the top of each sheet. Further, Farnsworth has not supplied any documentation to substantiate its allegation that one of Score's individual sureties did not authorize his use on Score's bid bond.

The agency reports that it conducted an extensive investigation of the individual sureties used by Score, including obtaining financial statements prepared by a certified public accountant on all four sureties, and found that at least two of the four sureties were acceptable. In view of the fact that the contracting officer is vested with a wide range of discretion and business judgment in determining the acceptability of individual sureties, C.E. Wylie Constr. Co., B-234225 et al., supra, the questionable veracity of the documentation submitted by Farnsworth to substantiate its allegations, and the apparent extensive investigation of the sureties conducted by the agency, we have no basis to object to the sureties.

The protest is denied.


James F. Hinchman
General Counsel